

EXHIBIT 34

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5 WEST 15TH STREET · HIGH IMPACT COMPOUND · MERCADO TRAILER · EAST ELMHURST, NY 11370

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October 27, 2021

By Electronic Delivery
Honorable Loretta A. Preska
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

**Report on Environmental Conditions re: *Benjamin v. Schiraldi*
75 Civ. 3073 (LAP)**

Dear Judge Preska:

Enclosed is OCC's report on specific environmental conditions within the NYC jails, pursuant to the late Judge Baer's 2001 Order on: Environmental Conditions. This report summarizes monitoring observations during May–August 2021 and provides an update on the Defendants' progress with respect to related orders entered by Judge Baer.

Respectfully submitted,



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By Electronic Copy Only

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TABLE OF CONTENTS

I. INTRODUCTION.....	2
II. MONITORING OBSERVATIONS.....	3
A. Sanitation.....	3
1. DOC Sanitation Reports.....	3
<i>a. Defendants’ Obligations</i>	<i>3</i>
<i>b. Defendants’ Performance</i>	<i>5</i>
<i>c. Defendants’ Compliance</i>	<i>7</i>
<i>i. OCC Methodology and Analysis.....</i>	<i>8</i>
<i>ii. Benjamin Inspection Protocol.....</i>	<i>11</i>
<i>iii. Discussion of Findings.....</i>	<i>13</i>
<i>iv. Recommendations</i>	<i>24</i>
2. DOHMH Inspection Reports	25
B. Heating and Ventilation.....	26
1. Defendants’ Ventilation Certification and Reports.....	26
<i>a. Defendants’ Obligations</i>	<i>26</i>
<i>b. Defendants’ Performance</i>	<i>26</i>
<i>i. Ventilation Certification</i>	<i>26</i>
<i>ii. Quarterly Mechanical Inspection Reports.....</i>	<i>26</i>
<i>iii. Monthly Airflow Reading Reports</i>	<i>27</i>
<i>iv. Airflow Deficiency Reports.....</i>	<i>27</i>
<i>v. Monthly Intake Ventilation Reports</i>	<i>28</i>
<i>c. Defendants’ Compliance</i>	<i>29</i>
C. Lighting.....	30
<i>a. Defendants’ Obligations</i>	<i>30</i>
<i>b. Defendants’ Performance</i>	<i>30</i>
<i>c. Defendants’ Compliance</i>	<i>31</i>
D. Fire Safety.....	31
III. COMPLAINTS.....	32

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Report on Environmental Conditions

Benjamin v. Schiraldi, 75 Civ. 3073 (LAP) Progress Report, May–August 2021

Nicole N. Austin–Best
10/27/2021

I. INTRODUCTION

The Office of Compliance Consultants (“OCC”) is authorized to monitor the Defendants’—the City of New York’s (“NYC”) and the NYC Department of Correction’s (“DOC” or the “Department”)—compliance with the Court’s mandates contained in various orders: the Order re: Fire Safety, dated November 13, 1998; the Order on: Environmental Conditions (the “Environmental Order”), dated April 26, 2001; the Order re: Testing and Repair of Ventilation Systems (the “Ventilation Order”), dated November 14, 2003; the Amended Supplementary Order re: Repair and Renovation of Ventilation Systems (the “Am. Supp. Ventilation Order”), dated February 11, 2009; the Amended Order re: Lighting Conditions (the “Am. Lighting Order”), dated October 7, 2010; the “so ordered” Stipulation concerning withdrawal of sanitation motions and steps to improve sanitation (the “Sanitation Stipulation”), dated October 14, 2010; the Supplemental Order re: Construction Projects Required by Amended Supplementary Ventilation Order, dated October 20, 2011; and the Second Supplemental Order re: Construction Projects Required by Amended Supplementary Ventilation Order, dated December 18, 2012.

This report summarizes the status of sanitation, ventilation, lighting, and fire safety within various New York City jails as reviewed by OCC during May–August 2021 (the “monitoring period”). A summary of complaints reported to OCC by The Legal Aid Society’s Prisoners’ Rights Project (“LAS” or “Plaintiffs,” sometimes “Plaintiffs’ counsel”) conclude this report. As required by the Revised Order re: Timetable for Submission of OCC Progress Reports, dated January 14, 2021, a draft of this report was circulated to the parties for review and comment. In accordance with longstanding practice, the parties’ comments to the draft report are appended to this final version of the report.

II. MONITORING OBSERVATIONS

A. Sanitation

1. DOC Sanitation Reports

a. Defendants' Obligations

The Environmental Order requires Environmental Health Officers to “make a thorough inspection of the entire institution in the course of the week and [to] make more frequent inspections when necessary to respond to particular problems—e.g., inmate complaints.” ¶ 3b. “The [E]nvironmental [H]ealth [O]fficer shall submit . . . reports of all such inspections, including a description of any ameliorative actions taken, planned [,] or recommended.” *Id.* at ¶ 3c. Public Health Sanitarians are required to conduct “weekly inspections of all facilities as well as weekly reports of deficiencies” and shall “provide reports on a regular basis to [OCC] with respect to environmental conditions that are the subject of this Order.” *Id.* ¶ 4. “[E]ach jail has an assigned Environmental Health Officer [], who is a captain trained by civilian managers (who are Public Health Sanitarians) at DOC's Environmental Health Unit [], and who conduct regular sanitation inspections. In addition, certain areas of jails are also regularly inspected by [] Public Health Sanitarians themselves.” Jan–April 2019 Report at FN1.

In addition to staff as described above, the Department must provide staff for OCC. Plaintiffs' counsel argues that the Defendants have failed “to provide sufficient staff for OCC to conduct its own independent inspections” (Pls.' counsel's comments at 1); however, adding additional staff to OCC before the expert sanitation inspection would be counterproductive. Foremost, the inspection will determine whether modifications need to be made to the existing sanitation protocol, which the Defendants have never implemented as designed, so there has been an underlying disagreement as to compliance based simply on procedure and practice.

Hopefully, the upcoming sanitation inspection will resolve this fundamental issue with the current protocol or result in the development of a protocol that will be incorporated as designed.

Secondly, OCC staff needs to be trained by a public health sanitarian, which has been the historical practice, and makes sound sense. Per the Environmental Order at FN1:

Although the job description and qualification requirements vary to some degree among employers, a public health sanitarian for purposes of this Order is a college educated professional, with [30 college] credits in the biological and/or physical sciences, who has undergone significant additional job specific training. By contrast, OCC-EHO's (sic) . . . shall be Department of Corrections' employees who have completed a shorter EHO training course Inspectors of the Department of Health . . . are public health sanitarians employed by the City Department of Health, as opposed to the City Department of Corrections (sic).

Surely, incoming OCC staff should be trained on a comparable level before undertaking inspections pursuant to the Environmental Order. Prior OCC staff was trained by Mr. Pepper during an overall training program designed expressly for the *Benjamin* litigation and attended by the Department of Correction's PHSs and EHOs. The training program included a full day classroom component that addressed the fundamentals of housekeeping, inspections and sampling, and a matrix review. The following day, field exercises were undertaken to demonstrate the differences in assessing compliance in dormitory areas versus cell blocks. These exercises were followed by a review of the inspection forms completed during the exercises and a question-and-answer period to address opinions, suggestions, and recommendations. The upcoming sanitation inspection incorporates a similar training program to be tailored to the needs of the Department based upon the inspection findings.

Lastly, OCC believes reviewing the Department's inspection practices and findings is vital to the Defendants' compliance efforts because the Department must be in a position to achieve and maintain constitutionally acceptable sanitation standards long after the dissolution of OCC. The Department has amended its processes in response to OCC's reviews and critiques of

the implementation of the sanitation protocol, which has made the Defendants’ compliance assessments more accurate.

b. Defendants’ Performance

During this monitoring period, OCC received redacted Public Health Sanitarian (“PHS”) reports and Environmental Health Officer (“EHO”) weekly reports from the Environmental Health Unit (“EHU”), intermittently, from May 6–August 27, 2021. The PHS reports consisted of inspections conducted April 19–August 13, 2021 and EHO reports of inspections conducted March 22–July 2, 2021. Each PHS report is comprised of individual inspections of several intake and living areas carried out on a specific date. The EHO reports, in comparison, are not comprised of individual inspections, but include several locations on each inspection report, dated for a specific day or several days depending on the facility. The PHS and EHO reports are provided to OCC as individual pages of larger reports instead of full reports since certain of the inspections involve matters or locations that are not currently subject to *Benjamin* monitoring. For example, OCC does not monitor staff areas, clinics and medical locations, and pantries; accordingly, some of the report pages provided to OCC are redacted for the same reason.

The PHS and EHO reports, collectively, should provide a snapshot of the conditions observed by the Sanitarians and Officers at a given time and aid in the ongoing assessment of the sanitation conditions within the jails; however, given the different formatting of the EHO reports and the reporting differences among the individual facilities, which make it difficult to ascertain violation dates, e.g., reporting period covering a day in some facilities versus one week in others, those reports have not been reviewed in this report. Moreover, the EHO reports are not formatted for *Benjamin* compliance rating and would take an inordinate amount of time for OCC to reformat and calculate.

OCC's review of the current monitoring period's PHS and EHO reports, as submitted by the EHU, indicates some discrepancies in the reported findings. For example, the EHO reported no ventilation, wall surface, or floor surface deficiencies in the AMKC intake on May 5, 2021, but the PHS found dusty vents, cracked wall tiles, cracked floor tiles, and missing floor tiles, among other deficiencies, on that date. On May 18, 2021, the circumstance was repeated when the EHO again found no ventilation, wall surface, or floor surface deficiencies while the PHS repeated the same violations that were reported on May 5, 2021 in addition to several other deficiencies. Similar discrepancies were found, generally, throughout the reports for which the PHS and EHO inspected the same area on the same date. Regardless of the specific discrepancies between the reports, overall, there was a clear decline in the Defendants' compliance when compared to that of recent monitoring periods.

c. Defendants' Compliance

The Defendants are not yet in substantial compliance with the Court's sanitation mandates. In fact, the Defendants' compliance has decreased significantly over the past year. Eighty percent (with zero housekeeping management observations) is the agreed upon minimum compliance percentage for the Department to meet accepted sanitation standards in individual intake and living areas.¹ The DOC has not met this standard in a significant number of instances. OCC's analysis of the PHS findings indicates that during 141 inspections of intake and living areas conducted May–August 2021, 61% indicated compliance—a stark decline from 76% for the same period of the previous year—with only 52% compliance in living areas. Below is a chart of the Defendants' compliance from January 2020 to present. It is widely known that the Department is undergoing significant staff shortages; however, the Defendants did not notify OCC of the impact that this has on compliance with the sanitation and related *Benjamin* orders.

Monitoring Period	January–April 2020	May–August 2020	September–December 2020	January–April 2021	May–August 2021
Number of Inspections	130	168	161	169	141
Compliance Percentage	62%	76%	78%	69%	61%

¹ [[T]he parties' experts and OCC's expert] adopted the 80% score with no sanitation management citations as the scoring criteria to determine a units (sic) pass or failure. The Department felt that a housekeeping score of 80% was easily achievable. The group felt that no sanitation management issues should exist, as these constitute the highest threat to human health.

i. OCC Methodology and Analysis

For this monitoring period, OCC chose all intakes and the following randomly-selected living areas for review:

1. AMKCMain Intake	17. NIC Main Intake	33. RNDC 2 C S
2. AMKCC-71 Intake	18. NIC Annex Intake	34. RNDC 3 C N
3. AMKCQuad Upper 10	19. NIC 3B	35. RNDC 5 C S
4. AMKCQuad Upper 14	20. NIC Dorm 1	36. RNDC 5 L N
5. AMKCQuad Lower 7	21. OBCC Main Intake	37. RNDC 5 L S
6. AMKCQuad Lower 10	22. OBCC Tower Intake	38. RNDC 6 C N
7. AMKCQuad Lower 12	23. OBCC 3 S	39. RNDC 6 L S
8. AMKCQuad Lower 15	24. OBCC 4 S	40. RNDC 6 Upper South
9. AMKCMod 1 Lower B	25. OBCC 4 U	41. RNDC Mod 3 Lower North
10. AMKCMod 9A	26. RMSC Intake	42. VCBC Intake
11. AMKCMod 11B	27. RMSC B 1	43. VCBC 3A/B
12. AMKCMod 12B	28. RMSC East 2B	44. WF Main Intake
13. EMTC Intake	29. RMSC Infirmary	45. WF CDU Intake
14. GRVC Intake	30. RMSC South 5B	
15. GRVC 1A	31. RNDC Intake	Several locations were closed at some time during the monitoring period.
16. MDC Intake	32. RNDC Mod 1 North	

The Court requires that “[s]hower facilities, janitors’ closets, laundry areas, and toilets, washbasins, sinks and other personal hygiene and sanitation facilities . . . be thoroughly cleaned and sanitized at least once daily and more often if necessary.” Environmental Order ¶ 11(a).²

The Department has removed most laundry areas, but the other types of sanitation facilities remain and are present in intake and living areas.

Intake Areas

OCC reviewed 47 inspection reports of the intake areas in AMKC, GRVC, NIC, OBCC, RMSC, RNDC, VCBC, and West Facility during May–August 2021. Compliance ratings ranged from 75.0 (AMKC Main Intake on May 18, 2021) to 96.3 (West Facility CDU Intake on June 9, 2021). Current PHS reports seem to indicate an improvement in intake areas over the previous

² This provision of the Environmental Order also requires that showers be power washed with a bleach solution on a quarterly basis. By Order re: Power Washing, dated December 14, 2010, the Court suspended this mandate and permitted the Department to steam clean or use less-damaging measures in an effort to preserve tile work.

monitoring period (from a low of 69.05 (MDC Intake on Feb. 24, 2021)); however, MDC is not included in the instant data set and that facility did not pass any of its inspections during the previous monitoring period. The improvement here may simply be the result of removing MDC from the analysis—the MDC intake area was not included in the PHS reports for this monitoring period and it had a compliance rating of less than 80.00 during each of its (four) inspections during the last monitoring period. Be that as it may, of the nine intake areas inspected during this monitoring period, four demonstrated compliance during each inspection and five were noncompliant during one or more inspections.

Living Areas

“Every living area (cells, dormitory, and modular sleeping areas, and showers/bathrooms and dayrooms in each of these units) shall be thoroughly cleaned and sanitized each week.”

Environmental Order ¶ 11(c). Further:

Each housing area shall have an adequately ventilated janitor (sic) closet equipped with a sink, or accessible to a sink, and shall have an adequate supply of cleaning implements and supplies, accessible to all detainees, so that each detainee can clean his cell daily and so that common areas of the housing blocks can also be cleaned. All cleaning implements shall be cleaned thoroughly after each use and stored in a clean, adequately ventilated place.

Id. ¶ 11(f)–(g).

OCC reviewed 94 inspection reports of living areas in AMKC, GRVC, NIC, OBCC, RMSC, RNDC, and VCBC during May–August 2021. Compliance ratings ranged from 62.5 (AMKC Quad Lower 7 on June 21, 2021) to 91.7 (RNDC 3 Central North on July 13, 2021). Ultimately, PHS reports indicate a decline in compliance from last monitoring period. Of the thirty housing areas reviewed for compliance, only six were compliant during each of at least two inspections and the remaining twenty-four were noncompliant during one or more inspections. (Seven housing areas were noncompliant during every inspection this monitoring

period: AMKC Mod 1 Lower B (two inspections), AMKC Mod 9A (three inspections – the same as the prior monitoring period), AMKC Quad Lower 7 (two inspections), OBCC 4 South (three inspections), RNDC 6 Central North (three inspections), RNDC Mod 1 North (two inspections) and RNDC Mod 3 Lower North (two inspections).)

Vacant Cells

The Defendants, additionally, remain noncompliant in cleaning and maintaining vacant cells in accordance with the Court’s mandate that “[e]very cell shall be thoroughly cleaned and sanitized upon becoming vacant, shall be kept clean of garbage and debris while vacant, and shall be inspected prior to reoccupancy to ensure that it is cleaned and sanitized.” Environmental Order ¶ 11(c). In the sample reviewed by OCC, the Sanitarians visited ninety-six vacant cells, sixteen of which were inspected twice during the monitoring period, resulting in 112 inspections.³ Of the 112 vacant cell inspections conducted by the Sanitarians in the areas surveyed by OCC during the monitoring period, 106 (95%) of those inspections yielded a combined 474 violations, and there were no violations during the remaining six (5%) vacant cell inspections, as detailed in Att. 1.

³ Unlike in prior monitoring periods, none of the vacant cells that were inspected twice, demonstrated compliance during both inspections.

ii. Benjamin Inspection Protocol

During PHS inspections, compliance is assessed in eleven categories, discussed below, using a binary scoring method of “0” if the location meets accepted standards or requirements and “1” if the location does not in the particular category. This binary system means that a score can be placed in the applicable field only if an assessment was made. Scoring a location in a category for which it was not assessed skews the compliance rating and makes it inaccurate. (The effect is similar when non-*Benjamin* locations (such as staff areas and clinics and medical locations) are included in inspections for this litigation.) An example of the inspection form is immediately below for reference. The sum of scores of each location in an intake or housing area is then calculated to produce a component trend score, for which “reduced sampling scoring must be 3 or less for the housing component to be considered to have met sanitary standards or requirements on all rows except the General, Day Room Furnishings, and Dormitory Bed rows which must be 2 or less.”

The compliance percentages are automatically calculated when the electronic inspection reporting form is used because the formula is embedded in the form, an Excel spreadsheet. Manually, the compliance percentages can be calculated as follows:

$$\frac{\text{the sum of the component trend scores}}{\text{the count of scores}} - 1$$

The compliance percentage must be 80.00 or higher for an intake or living area to be compliant; however, if there is at least one observation of cleaning and sanitizing procedures not being followed, lack of cleaning chemicals, inadequate cleaning equipment and equipment sanitation, or inadequate water facilities, the area fails the inspection, regardless of score. An example of this protocol is seen in the sample inspection form below: the area’s housekeeping compliance is 81.36%, but it does not pass the inspection because cleaning and sanitizing procedures were not followed in at least one instance.

Benjamin v. Schiraldi
75 Civ. 3073 (LAP)

Environmental Conditions
May–August 2021

NEW YORK CORRECTION DEPARTMENT
Facility Name: _____
Date of Inspection: _____

NEW YORK CITY JAILS
Unit: _____
Type: _____

Unit Component	Management/Sanitation					Housekeeping					COMPOUND TREND SCORE	INSPECTION NOTES (Place X in box)	
	CLEANING & SANITIZING PROCEDURES FOLLOWED	LACK OF CLEANING CHEMICALS	INADEQUATE CLEANING EQUIP & EQUIP SANITATION	ADEQUATE WATER FACILITIES PROVIDED	PRESENCE OF VERMIN OR INDICATOR ORGANISMS	UNCLEAN TO SIGHT	ORGANIC SOIL ACCUMULATIONS	SURFACES SMOOTH & EASILY CLEANABLE	PRESENCE OF ODORS	INADEQUATE LIGHTING			Ventilation
GENERAL	1	0	0	0	0	1	0	1	0	0	0	1	
Shower						1	0	1	0	0	0	2	
Toilet Area						1	0	0	0	0	0	1	
Day Room (General)						0	0	0	0	0	0	0	
Day Room (toilet)						1	0	1	0	1	0	3	
Day Room (furnishings)						0	0	0	0	0	0	0	
Utility/Janitor Room						0	0	0	0	1	0	1	
Storage						0	0	0	0	0	0	0	
Cell (Cell # :)												0	
Cell (Cell # :)												0	
Cell (Cell # :)												0	
Cell (Cell # :)												0	
Sleeping Area (General)						0	0	0	0	0	0	0	
Dormitory Beds						1	0	0	0	0	0	1	
Common Area						0	0	0	1	0	0	2	
UNIT COMPONENT TOTALS:	1	0	0	0	1	4	0	3	0	2	0		
Management/Sanitation Compliance Score:	1.00	Scoring: 1= Does not meet accepted standards or requirements. 0= Meets accepted standards or requirements. Blank = Not Applicable											
Housekeeping Compliance Percentage:	81.36%												
Housekeeping Compliance:	YES												
Total Unit Compliance:	NO	Unit must have a yes in this box to be in compliance Component Trend Score: Reduced Sampling scoring must be 3 or less for the housing component to be considered to have met sanitary standards or requirements on all rows except the General, Day Room Furnishings, and Dormitory Bed rows which must be 2 or less.											

Note: Housekeeping passes with >80 % but Unit fails on sanitation

iii. Discussion of Findings

The PHS inspections found 2771 violations distributed across all facilities, in the categories listed in the chart, immediately below, and the details of the violations observed in the categories are specified below or attached, if not identified here. The inspection findings are discussed below in terms of the housekeeping inspection matrix developed by the expert sanitarians.

Violation Category	Violation Instances
*absence of training materials in critical areas	3
inadequate cleaning equipment & station	16
inadequate lighting	13
*lack of adherence to established policies and procedures	7
lack of cleaning chemicals	1
organic soil accumulations	175
presence of malodors	3
procedures (not) followed	8
surfaces (not) smooth	464
unclean to sight	1800
ventilation	224
vermin	57

*finding is a subset of the “procedures (not) followed” category, which requires more than one observation to trigger a management violation

The following evaluative housekeeping criteria are taken directly from the training material. They are used to assess compliance during sanitation inspections and apply to the PHS inspections undertaken during this monitoring period. The following discussion is limited to the PHS inspections surveyed by OCC and does not represent all inspections undertaken during the current monitoring period.

ADMINISTRATIVE and MANAGERIAL OBSERVATIONS – The following five criteria apply to all areas, and at least one observation of any of the first four causes the area to fail the inspection.

1. CLEANING AND SANITIZING PROCEDURES (NOT) FOLLOWED

- a) uniform sanitary procedures as detailed in policies and procedures not followed
- b) cleaning frequency inadequate to maintain proper sanitation
- c) policy is inadequate to address soiling of the unit
- d) no evidence of training of inmates to housekeeping policy
- e) disposable gloves and other personal protective equipment not available, provided or used as per manufacturer's label requirements and/or institutional policy

Verification of these criteria is by indicating two or more of the following:

- lack of adherence to established policies and procedures
- no notation in unit log (schedule or frequency)
- absence of training materials or instructional postings in critical housekeeping areas
- direct chemical test of finished disinfectant solution
- negative responses to inmate and/or staff interviews

There were five instances (see chart immediately below) in which the EHU determined that the Department's cleaning and sanitizing procedures were not followed.

CATEGORY: Cleaning and Sanitizing Procedures (not) Followed				
FACILITY	AREA	DATE	LOCATION	FINDING
AMKC	Main Intake	18-May	storage	Virex (1) and Stride (2) in storage room
		2-Jul	storage	3/4 filled floor cleaner on shelf
	Quad Lower 7	21-Jun	janitor's closet	"no labels" on chemicals in Diversey dispenser
		19-Jul	janitor's closet	chemicals not labeled on Diversey dispenser
NIC	Dorm 1	19-May	sleeping area	Corcraft bottles (2) by beds #7 and #13

However, OCC believes that, ultimately, there were eight instances of Cleaning and Sanitizing Procedures (not) Followed during this monitoring period, as discussed here. OCC's review of the PHS reports indicate that the EHU did not assess OBCC 4 South as failing to follow procedures during the July 23 inspection despite finding "gloves not provided" upon inspection of the janitor's closet and "wiping cloths/sponges not stored in sanitizing solution." These two observations are indicative of an additional instance of Cleaning and Sanitizing Procedures (not) Followed and herein noted as such. Likewise, the EHU did not assess OBCC 4 Upper as noncompliant in this category

upon finding “no goggles and no gloves were present” on July 16; yet, these two observations indicate a further instance. To be clear, the EHU did not assess these two OBCC housing areas as passing their respective inspections; indeed, they both had several issues that resulted in compliance scores of less than 80.00. OCC raises the application of the sanitation protocol as an issue because of the actuality of assessing an area as compliant when it is not. In RNDC 6 Lower South on May 10, there were four observations that should have resulted in an additional finding in this category:

- in the dayroom, cleaning implements were left "immersed in a dirty [unidentified] solution" ;
- in the janitor's closet, the PHS found a "dirty used green pad . . . on the wall wooden shelf" ;
- in the janitor's closet, the English version of the cleaning poster was torn; and
- in the janitor's closet, the Spanish version of the cleaning poster was torn.

In this instance, the EHU did not apply the sanitation protocol properly and reported the housing area as passing its inspection. OCC disagrees and accordingly records RNDC 6 Lower South as noncompliant in this category on May 10, 2021 because each of the first two observations qualify as a lack of adherence to established policies and procedures while each of the latter two demonstrate absence of training materials or instructional postings in critical housekeeping areas. Per the sanitation protocol, the Cleaning and Sanitizing Procedures (not) Followed category is applicable upon verification of two or more of the above-listed.

Relatedly, seven additional observations of a lack of adherence to established policies and procedures and three more observations of the absence of training materials or instructional postings in critical housekeeping areas were recorded, but the single instances did not trigger the overall category of Cleaning and Sanitizing Procedures (not) Followed. Nevertheless, they are violations of the *Benjamin* sanitation orders and, as such, are noted herein and identified in the table immediately below.

Subcategory: lack of adherence to established policies and procedures

FACILITY	AREA	DATE	LOCATION	FINDING
AMKC	Mod 1 Lower B	20-Jul	janitor's closet	dirty used green pads on shelf
				dirty used sponge on shelf
	Quad Lower 7	19-Jul	janitor's closet	dirty used green pad on organizer
				dirty used yellow sponge on organizer
OBCC	4 South	12-Aug	janitor's closet	dirty sponge stored on chemical dispenser
VCBC	3AB	11-Aug	janitor's closet	dirty sponge on Diversey dispenser
	Intake	28-Jul	janitor's closet	used sponges not stored properly

Subcategory: absence of training materials in critical areas

FACILITY	AREA	DATE	LOCATION	FINDING
AMKC	Quad Lower 7	19-Jul	janitor's closet	no sanitation posters
RMSC	East 2B	12-Aug	janitor's closet	Spanish sanitation poster not provided
RNDC	6 Central North	20-Jul	janitor's closet	"no sanitation posters"

2. LACK OF CLEANING CHEMICALS

- a) cleaning chemicals not provided at the unit
- b) par levels not appropriate to the unit

Verification of the deficiency is by any one of the following:

- boundary markers in inventory levels that signal replenishment is necessary not established, or,
- amount or level considered to be adequate, not maintained, or,
- absence of a standard quantity as established by policy

There was one reported instance of a lack of cleaning chemicals during the PHS inspections:

CATEGORY: Lack of Cleaning Chemicals

FACILITY	AREA	DATE	LOCATION	FINDING
OBCC	4 Upper	16-Jul	janitor's closet	no cleaning chemicals present

3. INADEQUATE CLEANING EQUIPMENT AND EQUIPMENT SANITATION

- a) cleaning equipment in poor repair or worn
- b) cleaning equipment is visibly dirty and possibly malodorous
- c) inadequate storage of housekeeping equipment
- d) cleaning equipment storage appurtenances not available for the sanitary and safe storage of mops, brooms and brushes
- e) par levels inappropriate to the facility or not established to meet cleaning needs

There were sixteen observations recorded in this category during the PHS inspections.

Benjamin v. Schiraldi
75 Civ. 3073 (LAP)

Environmental Conditions
May–August 2021

CATEGORY: Inadequate Cleaning Equipment and Equipment Sanitation				
FACILITY	AREA	DATE	LOCATION	FINDING
GRVC	Intake	22-Jun	janitor's closet	Diversey dispenser inoperable
		7-Jul	janitor's closet	Diversey dispenser inoperable
		21-Jul	janitor's closet	Diversey dispenser inoperable
		6-Aug	janitor's closet	Diversey dispenser inoperable
OBCC	3 South	23-Jul	janitor's closet	dirty brooms stored with "dust bunnies"
				mop bucket excessively dirty and stored upright
	4 Upper	20-May	janitor's closet	dirty, stringy mop heads
				mop improperly stored
				mop wringer cracked and missing sections
		11-Jun	janitor's closet	chemical selection button missing from dispenser
				Diversey dispenser inoperable
		16-Jul	janitor's closet	Diversey dispenser inoperable
				only one mop available
			sleeping area	dirty sponge on window ledge
RNDC	Intake	7-May	janitor's closet	broken door and no chemicals in Diversey dispenser
		21-May	janitor's closet	Diversey door broken and dispenser inoperable

4. ADEQUATE WATER FACILITIES PROVIDED

- a) utility sink not readily available and/or accessible
- b) hot and cold water of adequate flow and pressure not provided
- c) absence of a free-flowing drain

During this monitoring period, there were no instances of inadequate water facilities during the PHS inspections surveyed by OCC.

5. PRESENCE OF VERMIN INCLUDING INDICATOR ARTHROPODS

Unlike the other four management categories, observations in this category do not cause an area to automatically fail inspection.

This criterion is listed under the management section because the presence of vermin or indicator organisms requires subsequent action by the correctional staff in reporting the observable condition. However, no further action on their part is necessary unless so directed. If an observation is made, that observation is informational only and does not factor into the overall unit compliance unless it remains unreported or uncorrected.

“Housekeeping Inspection Matrix” at 12.

The inspections reviewed by OCC, indicated that the Sanitarians observed vermin in seven of eight facilities as noted in the fifty-seven instances listed immediately below.

CATEGORY: Vermin				
FACILITY	AREA	DATE	LOCATION	FINDING
AMKC	Mod 9A	22-Jul	janitor's closet	gnats in area
	Quad Lower 10	23-Jun	janitor's closet	gnats in area
			toilet area	gnats in area
		19-Jul	cell #31 (O)	roaches noted
			toilet area	ants noted
	Quad Lower 12	19-Jul	common area	roaches noted
			janitor's closet	ants noted
				roaches noted
	Quad Lower 15	15-Jul	janitor's closet	gnats in area
		9-Aug	cell #18 (V)	roaches noted
			cell #22 (V)	gnats observed
GRVC	Quad Lower 7	21-Jun	dayroom	"live fruit flies"
		19-Jul	cell #15 (O)	fruit flies on wall
			dayroom toilet	fruit flies on wall
	1A	10-Jun	showers	drain flies on wall
		4-Aug	showers	drain flies on walls
	Intake	22-Jun	janitor's closet	live fruit flies in room
		7-Jul	showers	several fruit flies on wall
		21-Jul	pen #13	live fruit flies in room
			pen #4	flies in area
				live fruit flies in room
		6-Aug	pen #14	fruit flies in area

Benjamin v. Schiraldi
75 Civ. 3073 (LAP)

Environmental Conditions
May–August 2021

NIC			showers	fruit flies in area
	Dorm 1	16-Jun	janitor's closet	gnats in the area
		11-Aug	toilet area	gnats in area
OBCC	Main Intake	29-Jun	common area	flies in area
	3 South	29-Jun	showers	cockroach crawling on wall
				lower tier - numerous drain flies on walls
		23-Jul	janitor's closet	fruit flies observed
			showers	drain flies on walls - upper tier
		12-Aug	showers	cockroaches crawling on floor - upper tier stall #6
	4 South	23-Jul	showers	dead water bug on floor - upper tier
RMSC				drain flies on walls - upper tier
	Building 1	12-Aug	janitor's closet	drain flies on walls
			showers	drain flies on walls
	Intake	21-May	showers	dead water bug at junction
				live ants
RNDC		28-Jun	showers	drain flies on walls
		16-Jul	janitor's closet	dead roaches on floor
	3 Central North	11-Jun	common area	gnats in corridor
		6-Aug	common area	gnats in area
	5 Central South	3-Aug	common area	roaches in corridor
			janitor's closet	gnats in area
	5 Lower South	9-Jun	common area	gnats in corridor
		7-Jul	cell #8 (V)	gnats in area
			showers	gnats in area
	6 Central North	15-Jun	dayroom	roaches along corners and junctions
		20-Jul	cell #20 (V)	flies in area
	Mod 1 North	9-Jun	janitor's closet	gnats in area
	Mod 3 Lower North	22-Jun	sleeping area	gnats in area
VCBC		27-Jul	janitor's closet	gnats in area
			showers	gnats in area
			sleeping area	gnats in area
	3AB	7-Jul	janitor's closet	drain flies on walls
		11-Aug	janitor's closet	drain flies on walls
			showers	drain flies on curtains
				drain flies on walls

A review of the vermin observations over the last four reporting periods with the current period indicates a significant increase in vermin activity within the facilities. During the 2020 calendar

year, which covers three reporting periods, there was an average of forty-four observations, and in the last monitoring period, there were twenty observations.⁴ The Defendants should remain mindful of these observations and address them upon notification. The inspection notes for the current monitoring period point toward vermin in several locations throughout the intake and living areas, a change from the localized activity seen during previous inspections. Per, the “Inspection Matrix” (at 2) that was developed by Mr. Eugene Pepper and the parties’ experts in 2011 and currently used by the Department during its facility inspections:

This observation was included because housekeeping is a major component of integrated pest management. As such, it is integral to an effective housekeeping program. Because the actual pest eradication is coordinated by a professional pest control technician, who is not under the direct supervision of inmate management administration, it is not controlled as other components of the housekeeping program. Even though this observation is essential in the health and wellbeing of the inmates and staff, it does not factor into the compliance score, but is included as an informational component that requires immediate action when noted.

4

Monitoring Period	January–April 2020	May–August 2020	September–December 2020	January–April 2021	May–August 2021
Observations	44	43	45	20	57

HOUSEKEEPING OUTCOME OBSERVATIONS – the following six criteria are direct observations of physical housekeeping conditions.

1. Unclean to Sight:

- presence of loose filth and garbage
- dust and dirt accumulation
- soiling of touch points and/or high (common) touch surfaces
- soiled bed frames and dayroom furnishings
- soiled utility (janitor's) closet
- soil imbedded at transition areas such as edges of spalled tile, floor to wall junctions, door jambs, and furnishing floor anchors

The sanitarians recorded 1800 observations, across all facilities, which is an increase of 400 from the previous monitoring period, despite there being twenty-eight fewer inspections during this monitoring period and what OCC believes is an undercount since several inspections simply noted “paper, dirt, debris, and food items in several vacant cells” or “clothes, paper, dirt, debris, and food items on empty beds” instead of enumerating the violations. Certainly, a fully itemized list is not required as the sanitation protocol is binary and the entry of a “1” accounts for one observation or more than one observation per category and location. The listing of violations is helpful in determining repeat violations and overall changes in conditions. As in prior monitoring periods, the observations consist principally of dirty floors, corners, and junctions; dirty walls; dirty/dusty window screens and ledges; and dirty light shields. Att. 2. During this monitoring period only one PHS reliably reported repeat violations and OCC noticed numerous instances of repeat violations that were not so noted on the inspection reports.

2. Organic Soil Accumulations in Wet and Moist Areas:

- organic debris accumulation in and around toilets, urinals, utility sinks, lavatories and showers
- drain screens⁵ not cleaned of hair and debris; partially occluded drains resulting in temporary pooling of water
- chronic pooling of water and/or presence of chronically wet walking surfaces

There were 175 observations in this category, which consisted mostly of mildew on floors, walls, and ceilings in showers, toilet areas, and janitor's closets in all facilities except VCBC and West Facility. Att. 3. This is an increase from 103 during last monitoring period.

3. Surfaces (not) Smooth and Easily Cleanable:

- structural surfaces in poor repair; porous; uneven/irregular/jagged, for example: wall-floor junctions not smooth, rounded, or sealed; cracks, joints and tile grouting not sealed or in good repair
- beds and/or dayroom furnishings in poor repair

There were 464 reported observations of this category in all facilities, down from 643 observations during the last monitoring period, with numerous deficiencies reported repeatedly without abatement. Att. 4. Still, these instances of repeat occurrences are again undercounted, as OCC observed that sanitarians did not reliably record that several observations were repeated during the current monitoring period or from prior monitoring periods. As stated in prior monitoring periods, the Defendants' reported compliance does not incorporate the triggering of management violations based on the frequency of Unclean to Sight, Surfaces (not) Smooth and Easily Cleanable, and Organic Soil Accumulations in a unit. Per OCC's sanitation expert, Eugene Pepper:

These three criteria citations point out two critical failure (sic) by the institution. The first is the failure to properly clean (Unclean to Sight and Organic Soil Accumulations). The first step in any sanitation operations. This step is basically a soap and water step! This is a failure in procedure The frequency of these housekeeping failures, over 2 times in any one unit, is evidence of a general failure in following cleaning procedures prior to the

⁵ Per the Housekeeping Matrix, "If the floor drain is occluded or partially occluded with organic deposits below the drain screen, it cannot be cleaned using regular housekeeping methods. Therefore, it is not considered a non-compliance issue and a notation of the observation should be made in the comments section on the inspection report."

sanitation step. Such high frequencies of this citation trigger the more critical citation for failure to follow “Cleaning and Sanitizing Procedures” a management citation and an automatic non-compliance rating for the unit.

2013 ENVIRONMENTAL HEALTH INSPECTIONS FOR NEW YORK CITY JAIL FACILITIES
AT RIKERS ISLAND, at 7. Again, the Defendants disagree with Mr. Pepper’s position, which was supported by Plaintiffs’ Counsel’s expert during the 2011 sanitation inspection.

4. Lighting

- less than 10 foot-candles, measured at three feet from the target horizontal surface, or,
- less than optimal lighting from an existing and operational luminary—this includes observable conditions such as dimming or flickering and/or the presence of blackened ends of fluorescent light bulbs

The thirteen instances of inadequate lighting were concentrated in the janitor’s closets of AMKC, OBCC, and RNDC during this monitoring period. In certain cases, the inadequate lighting remained unabated after the initial report. Att. 5. Overall, instances of inadequate lighting continued to decrease, down from twenty-five during the prior period, but there is concern about the accuracy of the Defendants’ reporting. For example: GRVC 1A had “no operational light in the janitor[’]s closet” during its July 12 inspection, yet the PHS reported lighting as adequate and recorded a 28.5 FC reading. This cannot be. Clearly, there was no light in the closet to emit the foot-candles reported by the PHS.

5. Presence of Malodors:

Malodors are those that are classified as those that are distinctly septic, putrefactive, or body odors.

Instances of malodors were detected in three locations during the monitoring period.

FACILITY	AREA	DATE	LOCATION	FINDING
GRVC	1A	11-May	cell #8 (V)	malodor noted
OBCC	3 South	29-Jun	janitor's closet	malodor present
RMSC	Building 1	12-Aug	janitor's closet	malodor noted

6. Ventilation:

- exhaust ventilation in toilets, showers and utility closets not working
- exhaust ventilation grills occluded with dust, dirt or sealed with paint

The 224 observations of ventilation deficiencies represents an increase from 181 last monitoring period and were reported in all facilities. The deficiencies consisted principally of dirty/dusty vents and partially or fully occluded vents. Att. 6. In several instances, the condition was not abated and the same violation was reported more than once.

iv. Recommendations

Clearly, the Defendants have not maintained last year's progress toward improving compliance with the *Benjamin* sanitation mandates and compliance has decreased markedly during these last two monitoring periods. The Department has not notified OCC of the factor that is contributing to the decline in its performance; however, OCC is aware of staff shortages throughout the Department, which may have a significant impact on compliance with the *Benjamin* orders. The Defendants acknowledge this point in their comments to the draft of this report and offer “[a]pproximately 100 cleaners have been deployed in all facilities except West Facility, [VCBC], and EMTC.” Defs’. comments at 2. The cleaners will be deployed in service areas, which will allow DOC staff to concentrate on housing areas. The discrepancies between the PHS and EHO reports along with the inaccuracies of the sanitation inspections are increasing and have not been accounted for; nonetheless, the Defendants note that “to the extent the EHOs (who are captains) have been deployed to perform other tasks . . . that could undermine their ability to supervise the house details, which are comprised of residents in the housing facilities who are paid to keep the area clean.” *Id.* at 3. The Department has increased the hourly rate paid to house details in an effort to incentivize resident workers. *Id.* Based on these circumstances, OCC believes the Department may not be in a position to pass a sanitation inspection in November, as currently scheduled. This does

not mean that the inspection should not occur because, more than ever, it appears that an expert sanitation inspection would be very beneficial to the *Benjamin* litigation for the reasons stated previously:

- (1) to assess the Defendants’ overall progress made toward compliance,
- (2) to review the existing protocol to determine whether modifications need to be made, and
- (3) to establish the training needs of OCC and EHU (PHS and EHO).

2. DOHMH Inspection Reports

The Environmental Order requires the NYC Department of Health and Mental Hygiene’s Division of Environmental Health, hereinafter “DOHMH,” (formerly DOH) to “thoroughly inspect each jail at least once every month [,] . . . submit to [OCC] . . . reports of all such inspections, and the [DOC] shall provide [OCC] with a description of any ameliorative actions taken, planned or recommended.” Environmental Order at ¶ 6–6(a). As reported during the previous four monitoring periods, by Order dated March 24, 2020, the Court suspended “Paragraph “6” of the April 26, 2001 Order on Environmental Conditions . . . during the current public health crisis” and ultimately the DOHMH’s inspection and reporting requirements, temporarily. On August 5, 2021, Defendants notified OCC and Plaintiff’s counsel that DOHMH was preparing to resume inspections, but had concerns about the new Covid-19 variant. DOHMH has notified the Defendants that its inspections will resume on October 18, 2021. Defs.’ comments at 4. In past practice, the DOHMH submitted its reports to OCC approximately five to ten days after the end of the month represented in the reports and OCC expects that this practice will recommence with the resumption of the inspections.